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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 CALVIN MALONE,

10 Plaintiff,

11 v.

12 LESLIE SZIEBERT,

13 Defendant.

CASE NO. 3:15-CV-05552-RBL-DWC

ORDER

14 The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate  
15 Judge David W. Christel. On November 9, 2017, Plaintiff Calvin Malone, who is housed at the  
16 Washington Special Commitment Center (“SCC”), filed a Motion for Summary Judgment  
17 (“Plaintiff’s Motion”). Dkt. 80. On November 27, 2017, Defendant Leslie Sziebert filed a  
18 Motion for Summary Judgment (“Defendant’s Motion”). Dkt. 85. After considering the motions  
19 and record, the undersigned issued a Report and Recommendation (“R&R”) recommending  
20 Plaintiff’s Motion be denied and Defendant’s Motion be granted. *See* Dkt. 93. On March 16,  
21 2018, the Honorable Ronald B. Leighton, the District Judge assigned to this case, entered an  
22 Order adopting the R&R. Dkt. 94.

23 Plaintiff thereafter appealed the Order (Dkt. 94) to the Ninth Circuit Court of Appeals.  
24 *See* Dkt. 96, 97. On November 30, 2018, the Ninth Circuit entered a Memorandum vacating the

1 Order and remanding to this Court Plaintiff's claims alleging constitutionally inadequate medical  
2 care and an Equal Protection Clause violation. Dkt. 99. The Ninth Circuit specifically found:

3 [I]t is not clear from the record whether defendant Sziebert, or someone else, is  
4 responsible for scheduling patients to be transported to medical services. The  
5 position description for the Medical Director provides that the Medical Director  
6 has "extensive input into the daily operation of the clinical and residential  
7 programming," authority "over the entire scope of the [SCC] Program and all of  
8 its residential venues," and "direct responsibility for the oversight of all SCC  
9 medical policies." Further, Sziebert additionally admitted during his deposition  
10 that "there [are] occasions when the health and safety of a resident is  
11 compromised due to the physical location of the facility and length of time it takes  
12 to transport a patient to medical services." On this record, Sziebert has not met his  
13 burden of showing that there is no genuine dispute of material fact as to whether  
14 he was responsible for the alleged violations.

15 *Id.* at p. 2. The Ninth Circuit issued its mandate on December 24, 2018. *See* Dkt. 100.

16 In light of the decision from the Ninth Circuit, the Court directs the parties to file a joint  
17 status update. The parties shall provide the Court with the following:

- 18 • The status of the case;
- 19 • Whether additional discovery is necessary considering the Ninth Circuit's decision, and if  
20 so, the scope of discovery;
- 21 • What outstanding issues the parties believe the Court should address prior to trial,  
22 including whether the parties anticipate further motion practice; and
- 23 • Proposed trial dates.

24 The parties shall file the joint status update on or before March 8, 2019.

Dated this 6th day of February, 2019.



David W. Christel  
United States Magistrate Judge